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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,437	10/23/2003	Edward H. Tobergte	3313	8421

7590 . 06/30/2005

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EXAMINER

PATEL, TAJASH D

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/692,437	TOBERGTE, EDWARD H.	
	Examiner	Art Unit	
	Tejash D. Patel	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/23/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Bassett et al. (US 5,781,935). Bassett et al. (hereinafter Bassett) discloses a protective shoulder pad (20) that includes a foam body having a hard rigid inner layer (36) being positioned between first and second breathable layers of foam material (38,42) in a sandwich configuration and has a breathable fabric layer (34,35) that is secured about the periphery of the pad, col. 3, lines 1- col. 4, line 15 and as shown in figure 4. Further, the hard rigid inner layer includes spaced openings/perforation therethrough as shown in figure 5 which can inherently be made of plastic. Furthermore, the first and second foam layers are breathable with openings that align with the perforation of the inner layer, col. 4, lines 11-15.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that

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the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bassett in view of Bainbridge et al. (US 6,032,300). Bassett discloses the invention as set forth above except for showing the first and second breathable layers being formed of closed cell foam beads that are fused together.

Bainbridge discloses a protective pad that is made of closed cell foam beads that are fused together, col. 13, lines 61-67 and as shown in figures 30-32.

It would have been obvious to one skilled in the art at the time the invention was made to substitute the first and second breathable layers of Bassett being made of closed cell foam beads that are fused together as taught by Bainbridge as an alternative but equivalent means of absorbing force of impact as known in the art.

4. Claims 5-11 and 13-21, and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beland (US 6,845,522) in view of Bassett. Beland discloses left and right torso pads with left and right cap pad extending from the shoulder portion by means of a strap/loop (118) as shown in figure 2. Further, each of the cap pad provides protection to the arm while allowing movement in any direction as shown in figures 2 and 7. Furthermore, the shoulder portion includes removable left and right deltoid pads as shown in figures 14 and 15. Also, the

protective device of Beland is defined by outer arches with means for accessorizing the shoulder pad as shown in figure 7. However, Beland does not show the pads being made of first and second foam breathable layer with openings that align with the perforation of the inner hard layer therebetween.

It would have been obvious to one skilled in the art at the time the invention was made to form the pad of Beland from first and second foam breathable layer with openings that align with the perforation of the inner hard layer therebetween as taught by Bassett so that the device can absorb force of impact while being comfortable when worn about the body or as required for a particular application thereof.

5. Claims 12 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beland in view of Bassett as applied to claims 6 and 16 above, and further in view of Bainbridge. Beland when viewed with Bassett discloses the invention as set forth above except for showing the first and second breathable layers being formed of closed cell foam beads that are fused together.

Bainbridge discloses a protective pad that is made of closed cell foam beads that are fused together, col. 13, lines 61-67 and as shown in figures 30-32.

It would have been obvious to one skilled in the art at the time the invention was made to substitute the first and second breathable layers of Beland when viewed with Bassett being made

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of closed cell foam beads that are fused together as taught by Bainbridge as an alternative but equivalent means of absorbing force of impact as known in the art.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (703) 872-9306.

June 22, 2005



**TEJASH PATEL
PRIMARY EXAMINER**